

manifest) and may be made only after the Contractor delivers to the Owner the following documentation: (i) bills of sale from the supplier (or other point of purchase) made out to the Owner or City and other documentation evidencing purchase of such materials prior to the subsequent Application for Payment, the City's ownership thereof and the release of any right, title or lien thereto by any vendor (or that such payment and release of vendor rights will be made out of the funds so requisitioned by the Contractor), (ii) evidence that such materials are covered to their full replacement values by satisfactory bond and the Contractor's "all-risk" insurance or appropriate insurance for the location of storage against loss, theft and damage in a manner acceptable to the Owner, (iii) certification by the Contractor that such stored material has been segregated and marked as owned by the City and has been inspected, that it meets the Contract Document requirements. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 If the Contractor has made Application for Payment as provided in the Agreement and Section 9.3 above, the Architect will, within ten (10) days after receipt of such Application, issue to the Owner, with a copy to the Contractor, a Certificate for Payment for such amount (reduced by retention), as the Architect determines is due under this Contract or notify the Contractor in writing of his reasons for withholding a Certificate for Payment. Nothing herein shall be construed as requiring the Architect to certify such Applications or to dilute the retainage. All Certificates and Payments, including those pursuant to a pending claim, shall be subject to Owner's approval (which shall not be unreasonably withheld), and it shall not be necessary for the Architect to make any statement to this effect. The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The submission of an Application for Payment and the issuance of a Certificate for Payment will constitute a representation by the Contractor and the Architect, respectively, to the Owner, based on the Contractor's and Architect's observations and evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Contractor's and Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect or Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's or Owner's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect or Owner is unable to certify payment in the amount of the

Application, the Architect or Owner will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect/Owner cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner.

~~The~~Notwithstanding Section 9.6, the Architect or Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's or Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 ~~[Not Used.] reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;~~
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- ~~or~~
- .7 persistent failure to carry out the Work in accordance with the Contract Documents;
- .8 repeated failure of the Contractor to provide updated Monthly Status Reports and progress schedules;
- .9 the filing of a lien or attachment or a reasonable basis to believe that a lien or claim may be filed, except if the lien is the result of Owner's nonpayment of an amount contained in a previously submitted pay application over which no good-faith dispute exists between Owner and Contractor;
- .10 failure to comply with the approved Schedule; or
- .11 the existence of any event of default under the Contract.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment to which the Owner agrees, the Owner shall make payment in the manner and within the time provided in the Contract Documents, ~~and shall so notify the Architect.~~

§ 9.6.2 The Contractor shall promptly pay each Subcontractor, ~~upon~~ within five (5) days after receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Notwithstanding anything in this Section 9.6.2 to the contrary, the Owner may elect, in the Owner's reasonable discretion, to make any payment requested by the Contractor on behalf of a subcontractor of any tier jointly payable to the Contractor and such subcontractor. The Contractor and such subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create any (i) contract between the Owner and a subcontractor of any tier, (ii) obligations from the Owner to such subcontractor, or (iii) rights in such subcontractor against the Owner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner, for reasons other than default of the Contractor including, but not limited to those defaults set forth in Section 9.5.1, does not pay the Contractor within seven (7) days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, properly due Contractor, then the Contractor may, upon seven (7) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum/Guaranteed Maximum Price shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Guaranteed Maximum Price and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Guaranteed Maximum Price by an amount equal to that which the Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and the requirements of Section 4.4 of the Agreement are satisfied.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall thoroughly inspect the Work and shall prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected prior to final payment, and a written request for Architect's review of the Work for determining Substantial Completion. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, promptly complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.3.1 If the Contractor unreasonably requests Architect's review of the Work, and the Architect or the Owner determines that the Project or designated portion thereof is not Substantially Complete, the Contractor shall reimburse the Owner for its additional costs involved in prematurely evaluating and reviewing the Work (including but not limited to any fees charged by the Architect).

§ 9.8.4 When the Work or designated portion thereof is substantially complete in accordance with the Contract Documents, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not (i) constitute acceptance of Work not complying with the requirements of the Contract Documents, (ii) relieve the Contractor for responsibility for loss or damage due to or arising out of defects in, or malfunctioning of any Work, material, or equipment, or from any other unfulfilled obligations or responsibilities of Contractor under the Contract Documents, or (iii) commence any warranty periods from the Contract Documents; provided, however, that a Certificate of Partial Substantial Completion in form approved by the parties shall be issued when the Owner takes over and utilizes a portion of the Work that is complete (or substantially complete) for the use for which it is intended. The Certificate of Partial Substantial Completion issued in such event will contain a list of items for which warranty periods commence, but warranty periods on components of building systems not serving the area subject to Partial Occupancy will not commence until the Date of Substantial Completion of the applicable garage.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 The Contractor shall inspect the Work to determine that it is complete, is in accordance with the Contract Documents, and that the Contract has been fully performed. Upon receipt of written notice from the Contractor that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed and the items set forth on the final iteration of the punchlist ("Final Punchlist") is complete, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.1.2 If the Contractor unreasonably requests Architect's review of the Work, and the Architect or the Owner determines that the Project or designated portion thereof is not finally complete, the Contractor shall reimburse the Owner for its additional costs involved in prematurely evaluating and reviewing the Work.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied or will be paid from the amount due at final payment, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, ~~and~~ (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, (6) all governmental or other approvals and permits required for the beneficial use and occupancy of the Work, including a Certificate of Occupancy or Non-Residential Use Permit, if required, (7) two (2) sets of as-built record Drawings and Specifications, in form and substance satisfactory to the Owner, showing, without limitation, all utility lines, all piping, ducts and similar work installed or altered by the Contractor, (8) a final Contractor's sworn statement and final lien waiver from the Contractor, duly executed and acknowledged and evidencing that all Subcontractors have been fully paid, and similar sworn statements and lien waivers from all Subcontractors, Sub-subcontractors and material suppliers, (9) all guarantees and warranties required by the Contract Documents, endorsed as necessary by the Contractor to the Owner and all Owner bonds have been released, (10) certificates from the Contractor that the Project has been completed in accordance with the Contract Documents, (11) the Contractor's satisfactory cleaning of the site of the Work as required under the Contract Documents, (12) the notebooks identified in Section 3.12.12 herein; (13) two (2) sets of change orders; (14) reports including, but not limited to, equipment testing and balancing reports; (15) certifications and test results as called for in the Contract Documents; (16) keys approximately marked for all locks, along with key and master key inventory records; (17) maintenance stock as required by the Specifications; (18) minutes from all meetings; and (19) monthly progress photographs. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor shall ~~may~~ furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If, after final payment, any claim or lien is filed by any Subcontractor against the Owner, Contractor agrees to immediately upon request of the Owner furnish a bond and to defend and/or indemnify Owner against any such claim or lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, and expert fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner against the Contractor except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; ~~or~~
- .3 terms of ~~special~~ all warranties required by or arising under the Contract Documents;
- .4 faulty or defective Work;
- .5 [Not Used]
- .6 Claims arising from or discovered from Owner's examination of Contractor's books and records as provided for in the Contract Documents; or
- .7 continuing obligations, liabilities or responsibilities of Contractor that would otherwise survive completion and acceptance of the Work and final payment by Owner including, without limitation, Contractor's indemnification obligations under the Contract Documents.

§ 9.10.5 Except as may be otherwise agreed to by the parties as part of the final payment documentation, acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee, except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 all persons involved in or affected by the Project; ~~employees on the Work and other persons who may be affected thereby;~~
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors it being understood that any of the Contractor's, Subcontractors' or Sub-subcontractors' materials and equipment stored in work areas on the site shall conclusively be deemed to be in the custody of the Contractor, and the Contractor shall be responsible for the security of such materials and equipment; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. The Contractor and/or its Subcontractor shall pay any fines levied against the Owner or the Contractor or Subcontractors because of the Contractor's or Subcontractors' failure to comply with any safety regulations or laws, the cost of which shall be a Cost of the Work unless (1) it is caused by the Contractor's own negligence, or (2) it is caused by the negligence of one of the Contractor's Subcontractors or suppliers and Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Contractor shall make all reasonable efforts to recover such costs from any insurance, sureties, Subcontractors, or suppliers. If the Contractor and/or its Subcontractor fails to pay or contest any such fines, the Owner may, upon written notice to the Contractor, pay them and deduct such amount from moneys due or to become due to the Contractor, and the Contractor shall indemnify and hold the Owner and the City harmless against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of such failure to comply or pay.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall promptly report to Owner and Architect all accidents on the Project that cause death, personal injury, or property damage. The Contractor shall be responsible for all reasonable measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor, the cost of which shall be reimbursed as a Cost of the Work unless (1) it is caused by the Contractor's own negligence, or (2) it is caused by the negligence of one of the Contractor's Subcontractors or suppliers and Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Contractor shall make all reasonable efforts to recover such costs from any insurance, sureties, Subcontractors, or suppliers.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods (such as driving or removal of piles, wrecking, demolition, excavation, blasting, or other similar potentially dangerous Work) are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel and shall give Owner six (6) days advance notice. Contractor is fully responsible, at no increase to the Guaranteed Maximum Price, for any and all damages, claims, and for the defense of all actions against Owner and Architect, and their consultants and employees resulting from the prosecution of such Work, the cost of which shall be a Cost of the Work unless (1) it is caused by the Contractor's own negligence,

or (2) it is caused by the negligence of one of the Contractor's Subcontractors or suppliers and Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Contractor shall make all reasonable efforts to recover such costs from any insurance, sureties, Subcontractors, or suppliers.

§ 10.2.4.1 Use or storage of explosives is prohibited without prior which consent from the Owner, which must be received by the Contractor no less than fourteen (14) days in advance of use or storage of explosives. If the Owner grants consent, Contractor shall store all explosives in secure manner; mark all storage places clearly "DANGEROUS EXPLOSIVES" and shall maintain under care of competent watchmen at all times.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, the cost of which shall be a Cost of the Work unless (1) it is caused by the Contractor's own negligence, or (2) it is caused by the negligence of one of the Contractor's Subcontractors or suppliers and Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Contractor shall make all reasonable efforts to recover such costs from any insurance, sureties, Subcontractors, or suppliers. If insured damage or loss is not promptly paid by applicable insurance (taking into consideration the nature of the damage or loss), Contractor shall remedy such damage or loss and look to the applicable insurance for reimbursement. - except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents and damage to property, and to supervise and train personnel in the use of dangerous and hazardous equipment, materials and substances necessary for the Work. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded with weights that will exceed design loads so as to endanger its safety, the safety of adjacent existing buildings, or the safety and health of persons or property.

§ 10.2.8 Immediately upon entering the Project site for the purpose of beginning the Work, the Contractor shall locate all general reference points and exercise due care to prevent their destruction and perform all other duties set forth in Article 15 of these General Conditions. Where required by law or for the safety of the Work or of adjacent property or for the ongoing operations on property adjacent to the Project, the Contractor shall shore up, brace, underpin and protect foundations and other portions of existing structures which are in any way affected by the Work.

§ 10.2.9 Contractor shall give notice in writing at least forty-eight (48) hours before breaking ground to all persons owning property adjacent to or across the street from the Block 4 garage and to public utility companies, and to those otherwise in charge of streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise who may be affected by Contractor's operation, in order that they may remove any obstruction for which they are responsible and have representatives on the Project site to see that their property is properly protected. Such notice does not relieve Contractor of responsibility for any damages, claims, and defense of all actions against Owner and Architect resulting from performance of such Work in connection with or arising out of Contract.

§ 10.2.10 All parts of Work shall be braced to resist wind or other loads.

§ 10.2.11 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from injury by any reasonably foreseeable cause.

§ 10.2.12 Temporary items (such as, but not limited to, scaffolding, staging, lifting and hoisting devices, shoring, excavation, barricades, and safety and construction procedures) necessary in completion of Project shall be the responsibility of the Contractor and its Subcontractors and shall comply with all applicable codes and regulations. It

shall not be responsibility of Owner, Architect or their representatives to determine if Contractor, Subcontractors or their representatives are in compliance with the aforementioned regulations.

§ 10.2.13 The Contractor shall comply with all Federal Occupational Safety and Health Administration Hazard Communications Act (HAZCOM) requirements, including properly maintaining Materials Safety Data Sheets (MSDS) at the Project site. The Contractor shall ensure that all MSDS are compiled in a single location at the Project site, and are available to the regulating agencies. The Contractor shall indemnify and hold the Owner, City, and Architect harmless against Contractor's failure to comply with this provision.

§ 10.2.14 The Contractor shall be responsible, at its sole cost and expense, for any fines, penalties or charges by any regulatory body by reason of any violation by Contractor, a Subcontractor, or anyone for whom they may be responsible, of safety or health regulations. The Contractor shall indemnify and hold the Owner and the City harmless against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of such failure to pay fines.

§ 10.2.15 The Contractor shall notify Owner's, City's, and Architect's personnel upon arrival to the Project site of any known safety or health hazards at the Project, and the precautions they should take.

§ 10.2.16 The Contractor shall provide safety and health equipment (excluding boots) for the Owner, City, and Architect to protect them from safety and health risks during the performance of their services during the construction of the Project.

§ 10.2.17 The Architect's and Owner's review of Contractor's performance does not include review of adequacy of Contractor's safety or health measures.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a ~~material or substance~~ concealed and undisclosed hazardous material or substance, including but not limited to asbestos, polychlorinated biphenyl (PCB), radon gas, industrial waste, acids, lead, alkaline, irritants, contaminants, or other pollutants, excluding mild chemicals used in the cleaning of finished building materials, ~~or polychlorinated biphenyl (PCB)~~, encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area only and report the condition to the Owner and Architect in writing.

§ 10.3.1.1 If at any time Contractor shall become aware, or have reasonable cause to believe, that there has occurred or will occur any release of asbestos or any other hazardous substance for which a warning or disclosure is or will be required under any applicable law or regulation, or for which any reporting or notification to any local, state or federal governmental agency is or will be required under any applicable law or regulation, the Contractor shall immediately upon discovering such condition or suspected condition give notice thereof to the Owner.

§ 10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7. The term "rendered harmless" shall be interpreted to mean that levels of asbestos, polychlorinated biphenyls or other hazardous materials are less than any applicable exposure standards set forth in OSHA or MOSH or other applicable regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill

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or other materials to be incorporated into the Work that are known in the industry to be hazardous, toxic, or made up of any items that are known in the industry to be hazardous or toxic.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

§ 10.4 The Owner shall not be responsible under Section 10.3 for hazardous materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents and the Contractor has so notified Owner and Architect.

§ 10.4.1 Contractor shall avoid the use of substances known in the industry to be hazardous, and avoid any releases of such hazardous substances into the environment, in performing services under the Contract Documents. If the use of some hazardous substance is required in connection with a service or work to be performed under the Contract Documents, Contractor shall use its best efforts to procure and use the least hazardous substance or material suitable for such work or service. Contractor shall certify to Owner, and provide Owner with manufacturers' or suppliers' data (if available) indicating, that no asbestos-containing materials have been used in performing the Work.

§ 10.4.2 Contractor shall not, without Owner's prior written consent, use any substances known in the industry to be hazardous, or any construction materials containing such hazardous substances, at the Project site if the presence of such substances or materials, or the manner in which they are used, will cause or risk causing any exposure for which a warning or disclosure, to any occupant of the building other than Contractor's own employees and permitted subcontractors, would be required under any applicable law or regulation, at any time during the performance of the Work or within six (6) months after the final completion of the Work.

§ 10.4.3 Contractor shall provide the Owner and the Architect with material safety data sheets ("MSDSs") for any chemicals or materials used by Contractor in connection with work at the Project site. If MSDSs are not available for any materials or item for which such a request is made, Contractor shall use its best efforts to obtain from the manufacturer or vendor appropriate information concerning any hazardous substances used in the manufacture of such material or item.

§ 10.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.6 EMERGENCIES

§ 10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

§ 10.6.2 The Contractor shall promptly report in writing to Owner all accidents arising out of or in connection with the performance of the Work, whether on or off the Project site, which caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to Owner.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies acceptable to Owner, carrying at least a rating acceptable to the City and Owner, and lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor and its Subcontractors from claims set forth

below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18 to the extent such provisions relate to personal injury or property damage.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written on an occurrence basis for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, ~~whether written on an occurrence or claims made basis,~~ shall be maintained without interruption from date of commencement of the Work for a period not less than five (5) years after the date of Substantial Completion of the entire Work, or such longer period as required by law, until date of final payment and termination of any coverage required to be maintained after final payment.

§ 11.1.3 Certificates of insurance acceptable to the Owner or certified copies of policies if requested by Owner shall be filed with the Owner and City prior to commencement of the Work. These certificates and the insurance policies required by this ~~Section 11.1~~ Section 11 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least ~~30~~ sixty (60) days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Certificates required herein shall be furnished in duplicate, or copies of policies if requested by Owner shall be furnished in duplicate and shall specifically set forth evidence of all coverage required of the Contractor by this Article 11, and Contractor shall furnish to the Owner and City copies of endorsements that are subsequently issued amending coverage or limits. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

§ 11.1.4 The Contractor shall secure, pay for and maintain until all Work, including Work required by any guarantee or warranty required by the Contract Documents, is completed, such insurance as will protect the Contractor, the City, the Owner, the Owner's Representative, and agents and employees of any of them from claims for personal injury or property damage directly or indirectly arising or alleged to arise out of the performance of or failure to perform the Work, or the condition of the Work or the job site, from claims by workmen, suppliers or subcontractors, from claims under any scaffolding, structural work or safe place law, or any law with respect to protection of adjacent landowners, and from any other claims for damages to property or for bodily injury, including death, which may arise in whole or in part from operations by the Contractor or any subcontractor or anyone directly or indirectly employed by either of them. Such insurance shall cover all contractual obligations which the Contractor has assumed including the indemnification provisions under Section 3.18 to the extent such provisions relate to personal injury and property damage.

§ 11.1.5 The Contractor shall secure, pay for and maintain completed operations insurance for a period of five (5) years after the date of Final Completion of the Work or such longer period as may be required by law. It is understood that this coverage shall be provided pursuant to Contractor's annual renewal of its commercial general liability policies. Contractor shall provide ACORD certificates from the insurer(s) confirming that the persons and entities set forth in Section 11.6.1.2 are "additional insureds" under such annually-renewed policies.

§ 11.1.6 Certificates required herein shall be furnished in duplicate, or copies of policies if requested by the Owner, and shall specifically set forth evidence of all coverage required by Sections 11.1.1 and 11.1.2, and the Contractor shall furnish to the Owner copies of endorsements that are subsequently issued amending coverage or limits.

§ 11.1.7 Compliance by the Contractor with the insurance requirements contained in Section 11 shall not relieve him of liability under any indemnity or other provision set forth in the Contract Documents or limit his liability under the Contract Documents or applicable law.

§ 11.2 [Not Used.] OWNER'S LIABILITY INSURANCE

§ 11.2.1 [Not Used.] The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 [Not Used.] PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

§ 11.3.1 [Not Used.] Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Sections 11.1.1.2 through 11.1.1.5.

§ 11.3.2 [Not Used.] To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

§ 11.3.3 [Not Used.] The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Section 11.1.

§ 11.4 PROPERTY INSURANCE

§ 11.4.1 Unless otherwise provided, the ~~Owner~~Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of \$39,677,000, ~~the initial Contract Sum~~, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles as set forth in Section 11.6.1.8 below. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final completion of the entire Work, payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the ~~City~~, the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. This insurance shall provide that in the event of payment for any loss or damage, the insurer shall have no right of recovery against any parties named as insured or additional insureds.

§ 11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, ~~falsework~~, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.4.1.2 If the ~~Owner~~Contractor does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the ~~Owner~~Contractor shall so inform the ~~Contractor~~Owner in writing prior to commencement of the Work. The ~~Contractor~~Owner may then effect insurance which will protect the interests of the ~~Contractor~~Owner, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the ~~Owner~~Contractor. If the ~~Contractor~~Owner is damaged by the failure or neglect of the ~~Owner~~Contractor to purchase or maintain insurance as described above, without so notifying

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the ~~Contractor~~Owner in writing, then the ~~Owner~~Contractor shall bear all reasonable costs properly attributable thereto.

§ 11.4.1.3 If the property insurance requires deductibles, the ~~Owner~~Contractor shall pay costs not covered because of such deductibles as a Cost of the Work.

§ 11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.4.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.4.2 **Boiler and Machinery Insurance.** The ~~Owner~~Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the City, Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the City. Owner and Contractor shall be named insureds.

§ 11.4.3 ~~[Not Used.] Loss of Use Insurance.~~ The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.4.4 If the ~~Owner~~ Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the ~~Owner~~Contractor shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.4.5 ~~[Not Used.] If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

§ 11.4.6 Before an exposure to loss may occur, the ~~Owner~~Contractor shall file with the ~~Contractor~~Owner a copy of each policy that includes insurance coverages required by this ~~Section 11.4~~Section 11. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least sixty (60) ~~30~~ days' prior written notice has been given to the Contractor and Owner.

§ 11.4.7 **Waivers of Subrogation.** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, the City, separate contractors described in ~~Article~~Section 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by and paid for by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in ~~Article~~Section 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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§ 11.4.8 A loss insured under ~~Owner's~~ Contractor's property insurance shall be adjusted by the Contractor and Owner as fiduciary and made payable to the Contractor and Owner as fiduciary for the insureds, as their interests may appear, ~~subject to requirements of any applicable mortgagee clause and of Section 11.4.10.~~ The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate written agreements, ~~written where legally required for validity,~~ shall require Subcontractors to make payments to their Subcontractors in similar manner.

§ 11.4.9 If required in writing by a party in interest, the Owner and Contractor as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's and Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner and Contractor shall deposit in a separate account proceeds so received, which the Owner and Contractor shall distribute in accordance with such agreement as the parties in interest may reach, ~~or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6.~~ If after such loss no other special agreement is made, and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.4.10 The Owner and Contractor as fiduciary shall have power to adjust and settle a loss with insurers, ~~unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.~~

§ 11.4.11 The Contractor shall secure, pay for and maintain whatever all-risk Fire or Extended Coverage (Property) Insurance the Contractor may deem necessary to protect himself against loss of owned or rented capital equipment and tools, including any tools owned by mechanics, and any tools, equipment, scaffoldings, stagings, towers and forms owned or rented by the Contractor. The requirements to secure and maintain such insurance is solely for the benefit of the Contractor. Failure of the Contractor to secure such insurance or to maintain adequate levels of coverage shall not obligate the Owner, the Owner's Representative, the Architect or their consultants or their agents and employees for any losses of owned or rented equipment. If the Contractor secures such insurance, the insurance policy shall include a waiver of subrogation clause as follows: is agreed that in no event shall this insurance company have any right of recovery against the Owner, the Owner's Representative or the Architect, their consultants, agents and employees.

§ 11.5 PERFORMANCE BOND AND PAYMENT BOND

§ 11.5.1 Contractor and Subcontractors will provide Little Miller Act Performance and Payment Bonds in the form attached as Exhibit S, with dual obligee riders in forms acceptable to Owner's lender and the City, in accordance with the City Purchasing Ordinance set forth in Chapter 17 of the Rockville City Code. ~~The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.~~

§ 11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 11.5.3 All bonds shall be written through a reputable and responsible agency licensed to do business in the place in which the Project is located. The surety must be rated "A" or better as to management by Best's Insurance Guide published by the Alfred M. Best Co., Inc., Oldwick, New Jersey 08858. The bond amount shall not exceed 10% of the policy holder's surplus (capital and surplus) of the surety as listed by the Best's Insurance Guide. Attorneys-in-Fact who sign such surety bond must file with it a certified copy of their power of attorney to sign such bonds.

§ 11.6 FORM OF INSURANCE COVERAGE

§ 11.6.1 The insurance required by Section 11.1.1 shall be written on an occurrence basis for not less than any limits of liability required by law or by those shown below, whichever is greater. The Contractor's use of self insurance, which must be approved in writing by the Owner, or the amount of deductibles shall not limit his indemnification obligations under this Contract or applicable law.

<u>.1</u>	<u>Worker's Compensation:</u>	<u>Statutory</u>
	<u>Employer's Liability:</u>	<u>\$500,000 per accident, minimum limits</u>
	<u>\$500,000</u>	<u>bodily injury disease aggregate</u>
	<u>\$500,000</u>	<u>bodily injury by disease for each accident</u>

The Contractor's and Subcontractor's Worker's Compensation policy shall be endorsed to waive subrogation against the City, Owner, its shareholders, officers and directors, the Architect and its consultants, and their agents and employees.

- .2 Commercial General Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis, written on the occurrence form, on a per project basis including:

Premises operations (including X, C & U).

Independent Contractor's Protective.

Products and Completed Operations to be maintained pursuant to Section 11.1.5 for five (5) years after final completion of the Work.

Contractual - including specified provision for the Contractor's Obligation under Section 3.18 to the extent such provisions relate to personal injury or property damage.

Personal injury.

Broad form property damage including completed operations.

<u>Minimum Limits:</u>	<u>\$1,000,000</u>	<u>Each Occurrence Bodily Injury and Property Damage</u>
	<u>\$2,000,000</u>	<u>General Aggregate on a Per Project Basis</u>
	<u>\$2,000,000</u>	<u>Personal Injury and Advertising Injury Liability</u>

The policy shall contain an endorsement indicating the Owner, City, Lender, Owner's Representative and their shareholders, officers, members, and directors are "additional insureds" under the Contractor's Commercial General Liability coverage, and the coverage available to them under the policy is primary and non-contributory over any other coverage available to them.

- .3 Business Automobile Policy:

Minimum Limits: \$1,000,000 Combined Single Limit Bodily Injury and Property Damage Per Project

Coverage shall include all automobiles owned, leased, hired or borrowed.

The policy shall contain an endorsement indicating the Owner, City, Lender, Owner's Representative and their shareholders, officers, members and directors of Owner are "additional insureds" under the Contractor's Business Automobile Policy, and the coverage available to them under the policy is primary and non-contributory over any other coverage available to them.

- .4 Umbrella Excess Liability:

<u>Minimum Limits:</u>	<u>\$50,000,000</u>	<u>Combined single limit and aggregate (following the form of the primary insurance required by Sections 11.6.1.1, 11.6.1.2 and 11.6.1.4)</u>
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The policy shall contain an endorsement indicating the Owner, City, Lender, Owner's Representative, their shareholders, officers, members and directors are "additional insureds" under

the Contractor's Umbrella and/or Excess Liability policy, and the coverage available to them under the policy is primary and non-contributory over any other coverage available to them.

- .5 The Contractor is responsible for insuring that each Subcontractor provides adequate insurance for construction projects of this type.
- .6 The policies provided by the Contractor shall provide that any obligation imposed upon the insured (including without limitation, the liability to pay premiums) shall be the sole obligation of the Contractor and not of any other insured.
- .7 The Contractor shall require each insurer under each policy provided by the Contractor to waive all rights of subrogation against the Owner and City, any right of set-off or counterclaim, and any other right to deduction, whether by attachment or otherwise.
- .8 As to the property insurance all losses shall be payable, notwithstanding the construction, use or occupancy of the Project or site for purposes more hazardous than permitted by the terms of such property policy. The deductible on the property insurance shall be per the terms of the policy.
- .9 Each Subcontractor shall furnish the Contractor with a valid Certificate of Insurance confirming the insurance coverage and stating that no reduction in, cancellation, or expiration of the policy will be made without thirty (30) days' written notice by the insurance company to the Contractor.
- .10 The obligation of the Contractor as set forth in Section 3.18.1 of the General Conditions as it relates to personal injury and property damage shall be specifically referenced in the insurance certificates as being incorporated in the insurance coverage provided to the Owner under this Section.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect or Owner, be uncovered for the Architect's or Owner's examination and be replaced at the Contractor's expense without change in the Contract Time or Guaranteed Maximum Price.

§ 12.1.2 If a portion of the Work has been covered which the Owner or Architect has not specifically requested to examine prior to its being covered, the Architect/Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, the cost of correction shall be a Cost of the Work unless (1) it is caused by the Contractor's own negligence, or (2) it is caused by the negligence of one of the Contractor's Subcontractors or suppliers and Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Contractor shall make all reasonable efforts to recover such costs from any insurance, sureties, Subcontractors, or suppliers. correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ 12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or Owner as defective or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, the cost of which shall be a Cost of the Work unless (1) it is caused by the Contractor's own negligence, or (2) it is caused by the negligence of one of the Contractor's Subcontractors or suppliers and Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Contractor shall make all reasonable efforts to recover such costs from any insurance, sureties, Subcontractors, or suppliers. All machinery equipment, and building systems used by Contractor or Subcontractor prior to Substantial Completion shall be serviced and conditioned, if necessary, the cost of which shall be a Cost of the Work unless (1) it is caused by the Contractor's own negligence, or (2) it is caused by the negligence of one of the Contractor's Subcontractors or

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suppliers and Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Contractor shall make all reasonable efforts to recover such costs from any insurance, sureties, Subcontractors, or suppliers.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner or the City to do so unless the Owner or the City has previously given the Contractor a written acceptance of such condition. The Owner or the City shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner or the City fails to notify the Contractor about such condition and give the Contractor an opportunity to make the correction, the Owner and the City waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, City, or Architect, the Owner or the City may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. The obligation under this Section 12.2.2 shall survive acceptance of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost within the Guaranteed Maximum Price of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work, which is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 In any case where, in fulfilling the requirements of the Contract Documents or of any guarantee embraced therein or required thereby, the Contractor disturbs any work performed under another contract, Contractor shall restore such disturbed work to a condition satisfactory to the Architect or the Owner and shall guarantee such restored work to the same extent as it was performed by the other contractor.

§ 12.2.7 If during the guarantee or warranty period, any material, equipment or system for which the Contractor is responsible requires corrective work because of defects in materials or workmanship for which the Contractor is responsible, the Contractor shall commence to undertake all required corrective work within five (5) business days (and within forty-eight (48) hours in the case of an emergency, elevator defect, or HVAC defect) after receiving the notice and work diligently until corrective work is completed. If the Contractor does not, in accordance with the terms and provisions of the Contract Documents, commence all corrective work within five (5) business days (or, where applicable, forty-eight (48) hours) or if the Contractor commences such work but does not pursue it in an expeditious manner, the Owner may either notify the bonding company (if any) to have such work and/or obligations performed at no additional cost to the Owner or may perform such work and/or obligations and charge the costs thereof to the Contractor. Contractor shall correct any defects noted by the Owner as to Work for which the Contractor is responsible and if it is later determined that such defects were the responsibility of others, Owner will pay Contractor an amount calculated in accordance with Section 7.3.6 of these General Conditions. The obligations of the Contractor or any Subcontractor under the terms and provisions of the Contract Documents shall

not be limited to the payments made by the surety (if any) under the provisions of this Contract. Ten (10) months following Substantial Completion the Contractor shall accompany the Owner, City, and the Architect on an inspection of the Project and the Contractor shall promptly correct any defective Work or non-conforming Work for which the Contractor is responsible.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

§ 12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the ~~Contract Sum~~ Guaranteed Maximum Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made; if acceptance occurs after final payment, Contractor shall pay an appropriate amount to Owner. If Contractor requests Owner to accept nonconforming Work, all costs incurred in Owner's investigation of whether to accept such Work, including but not limited to fees and charges of Architect, engineers, testing agencies, etc., shall be paid for by the Contractor as a Cost of the Work if incurred prior to final payment.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

§ 13.1.1 The Contract shall be governed by the law of the State of Maryland, without reference to its choice of law conflicts of law provisions, place where the Project is located.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or subcontract it as a whole without the written consent of the Owner. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, it that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to any person or entity financially capable of performing the Owner's obligations under this Contract, including but not limited to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.2.3 Contractor shall not assign any monies due or to become due hereunder without written consent of Owner and of Contractor's Surety, which consent of Surety shall be filed with Owner and Architect, as well as the proposed assignment. In case Contractor assigns all or any part of any monies due or to become due under this Contract, such instrument or assignment must contain a clause substantially to the effect that it is agreed that right of assignees in and to any monies due or to become to Contractor shall be subject to prior liens and claims of all persons, firms and corporations for services rendered; for payment of all laborers and mechanics for labor performed; for payment for all materials and equipment furnished and payment for all materials and equipment used or rented in performance of the Work called for in Contract; and for payment of any liens, claims, or amounts due to governments or any of their funds.

§ 13.3 WRITTEN NOTICE

§ 13.3.1 All notices required or permitted hereunder shall be in writing and shall be deemed duly given and received when delivered in person (with receipt therefor), when sent by facsimile (with confirmation therefor), on the next business day after deposit with a recognized overnight delivery service, or on the fifth (5th) day after being sent by United States registered or certified mail (return receipt requested), to the following addresses:

to Contractor: The Whiting Turner Contracting Company
300 East Joppa Road, 8th Floor
Towson, MD 21286
Attn: Andrew Linden

a copy to: The Whiting Turner Contracting Company
300 East Joppa Road, 8th Floor
Towson, MD 21286
Attn: Tom Kenney, Esq.

and

The Whiting Turner Contracting Company
300 East Joppa Road, 8th Floor
Towson, MD 21286
Attn: James Owens

and

The Whiting Turner Contracting Company
300 East Joppa Road, 8th Floor
Towson, MD 21286
Attn: Kevin Higgins

If to Owner: RD Rockville Garage, LLC
c/o DANAC Corporation
7501 Wisconsin Avenue, Suite 1120
Bethesda, MD 20814
Attn: Ben Stonestreet

With a copy to: Ross Development & Investment
7910 Woodmont Avenue, Suite 350
Bethesda, MD 20814
Attn: Scott J. Ross

Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law or in equity, except as specifically limited herein.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. ~~Unless otherwise provided, the~~ The Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and, ~~except for trade contractor testing, the Owner shall bear all related costs of such tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.~~

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect or Owner will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the

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Architect and Owner of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents and any Legal Requirement, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense, the cost of which shall be a Cost of the Work unless (1) it is caused by the Contractor's own negligence, or (2) it is caused by the negligence of one of the Contractor's Subcontractors or suppliers and Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Contractor shall make all reasonable efforts to recover such costs from any insurance, sureties, Subcontractors, or suppliers.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect and Owner.

§ 13.5.5 If the Architect or Owner is to observe tests, inspections or approvals required by the Contract Documents, ~~the Architect~~ they will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5.7 REFERENCE STANDARDS AND SPECIFICATIONS

§ 13.5.7.1 Various standards and specifications are incorporated by reference in the technical sections of the specifications. In all such instances, the reference shall be to the latest edition, including amendment or revision, in effect as of the date of these specifications, unless a specific issue is identified.

§ 13.5.8 MATERIAL INSPECTIONS

§ 13.5.8.1 The Owner and the City have the right, but not the obligation, to inspect any material or equipment at any state of development or fabrication, whether specified or noted, including, but not limited to, the manufacturer's plant or mill. Such inspection shall not release the Contractor from any responsibility or liability with respect to such material or equipment.

§ 13.5.8.2 Witnessed performance tests shall occur when required by governing authorities or when the Specifications so require.

§ 13.5.8.3 Testing mentioned in the technical Specifications to be performed by the Owner (a) shall be performed by the Contractor unless the Owner elects otherwise or the Owner expressly agrees in writing to perform such testing prior to the commencement of construction, and (b) if executed by the Owner shall be executed, and the results thereof shall be provided to the Contractor and the Architect. Performance or nonperformance of the test by the Owner shall not relieve the Contractor of responsibility for compliance with requirements of the Contract Documents.

§ 13.6 INTEREST

§ 13.6.1 Payments due and unpaid under the Contract Documents shall bear interest at the rate set forth in Section 14.2 of the Agreement, from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 [Not Used.] COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ 13.7.1 [Not Used.] As between the Owner and Contractor:

1. [Not Used.] **Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
2. [Not Used.] **Between Substantial Completion and Final Certificate for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to

run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

3. [Not Used.] After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

§ 13.8 MECHANIC'S LIENS AND CLAIMS

§ 13.8.1 If, at any time, any notices of lien are filed for labor performed or materials or equipment furnished or delivered to or for the Work, the Contractor, within ten (10) calendar days after the date of the filing of such notice of lien, and to the Owner's and City's satisfaction, shall discharge, remove and post a bond satisfactory to the Owner and City for such lien or claim of lien and shall indemnify and defend, and hold the Owner and City harmless for all costs, including but not limited to, attorneys' fees and expert fees, regarding such lien or claim of lien, together with interest on the same from the date any such cost was paid by Owner or City until reimbursed by Contractor at the rate of interest provided in Section 14.2 of the Agreement, the cost of which shall be a Cost of the Work unless the lien or claim of lien is the result of the Contractor's failure to pay to a Subcontractor or supplier, without just cause, an amount previously paid by the Owner to the Contractor. If, however, the purported lien or claim is the result of the Owner's failure to pay, without just cause, an amount contained in a properly submitted invoice, then the Contractor shall not be obligated to discharge such lien and to defend the Owner as set forth in Section 13.8. The obligations of Contractor under this Section shall survive the expiration or termination of the Contract.

§ 13.8.2 To the extent applicable, the Contractor hereby subordinates all contractor's, laborer's, mechanic's, materialmen's, judgment and other similar liens that it may have or acquire hereunder as to the Work, or to the land on which the Work is located to the liens securing payment of sums now or hereafter borrowed by the Owner or the City for the Work and the land. At the request of the Owner or City, the Contractor shall execute such additional documents as may be requested from time to time by the Owner or City to give effect to the provisions hereof and shall use his best efforts to cause the Subcontractors and other parties furnishing labor or materials for the Work to subordinate their liens to such aforesaid sums.

§ 13.8.3 Contractor shall promptly advise Owner and City in writing of any action, administrative or legal proceeding or investigation as to which Section 13.8.1 may apply, and Contractor, at Contractor's expense (the cost of which shall be a Cost of the Work unless the lien or claim of lien is the result of the Contractor's failure to pay to a Subcontractor or supplier, without just cause, an amount previously paid by the Owner to the Contractor) shall assume on behalf of Owner and City and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to Owner and City, provided that Owner and City shall have the right to be represented therein by advisory counsel of their own selection and at their own expense, and provided further that if the defendants in any such action include Contractor, Owner and/or the City, and Owner or the City shall have reasonably concluded that there may be legal defenses available to it which are inconsistent with those available to Contractor, or if Owner or the City concludes Contractor has a conflict of interest and cannot adequately represent Owner or the City, then Owner or the City shall have the right to select separate counsel to participate in the defense of such action on its own behalf for which fifty percent (50%) of the cost shall be at the Contractor's expense, the cost of which shall be a Cost of the Work unless the lien or claim of lien is the result of the Contractor's failure to pay to a Subcontractor or supplier, without just cause, an amount previously paid by the Owner to the Contractor. In the event of failure by Contractor to fully perform in accordance with this Section, Owner or the City at its option, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses, including but not limited to attorneys' fees and expert fees, so incurred by Owner or the City in that event shall be reimbursed by Contractor to Owner and the City, together with interest on the same from the date any such expense was paid by Owner or the City until reimbursed by Contractor at the rate of interest provided in Section 14.2 of the Agreement. The obligations of Contractor under this Section shall survive the expiration or termination of the Contract.

§ 13.8.4 The Project involves land and improvements that are owned by the City.

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§ 13.9 DAMAGE TO EXISTING STRUCTURES AND PROPERTY

§ 13.9.1 The Contractor shall conduct his operations so as not to damage adjacent structures, existing structures, any work installed either by him or by other contractors, or any personal property of the Owner or others. The Contractor shall repair and make good as new the damaged portions, the cost of which shall be a Cost of the Work unless (1) it is caused by the Contractor's own negligence, or (2) it is caused by the negligence of one of the Contractor's Subcontractors or suppliers and Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Contractor shall make all reasonable efforts to recover such costs from any insurance, sureties, Subcontractors, or suppliers.

§ 13.10 MANUFACTURER'S WARRANTIES

§ 13.10.1 The Contractor warrants that all manufacturers' or other warranties on all materials and equipment furnished by the Contractor shall run directly to or be specifically assigned to the Owner and/or City on demand or upon final completion of the Project.

§ 13.10.2 The Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications, as applicable. Prior to final completion, the Contractor shall obtain a statement from the manufacturer approving the Contractor's installation of all materials and equipment. If the Owner or City seeks to enforce a claim based upon a manufacturer's warranty and such manufacturer fails to honor its warranty based, in whole or in part, on a claim of defective installation by a Contractor, a Subcontractor, or anyone for whom they may be responsible, the Owner or City shall be entitled to enforce any claim for defective installation against the Contractor.

§ 13.11 The Contractor and Subcontractors shall not be permitted, without Owner's written consent which may be withheld in the discretion of the Owner, to place any signs stating the name of the Contractor or Subcontractors on the Project site.

§ 13.12 The headings contained in the Contract are inserted only for convenience and reference and are not meant to define, limit or describe the scope or intent of the Contract Documents or in any way to affect the terms and provisions set forth herein.

§ 13.13 If any term or provision of the Contract, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, the remainder of the Contract, or the application of the Contract to persons or circumstances other than those against whom or which such term or provision is invalid or unenforceable, shall not be affected thereby; and each term and provision of the Contract shall be valid and enforceable to the fullest extent permitted by law.

§ 13.14 All matters that relate to the termination or expiration of this Contract, or that in the normal course may not occur or be effectuated until after such termination or expiration, as well as all rights and obligations of the parties pertaining thereto whether or not specifically stated in a particular provision in this Contract, will survive any termination or expiration of this Contract and will be given full force and effect notwithstanding any termination or expiration of this Contract, but such survival will not operate to extend any applicable statute of limitations.

§ 13.15 The Contractor shall take and develop 8.5" x 11" color progress photographs of the Work twice each month at the same times and places each month. Such photographs shall be in sufficient quantity to accurately depict the point to which construction has progressed.

§ 13.16 EQUAL OPPORTUNITY

- .1 Contractor and Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates for pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

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- .2 Contractor and Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

§ 13.17 DISCRIMINATION

§ 13.17.1 In the performance of the Work, the Contractor and Subcontractors agree not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability, sexual orientation or national origin. This provision shall include, but be limited to the following: employment, upgrading, demotion, promotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

§ 13.17.2 If the Contractor fails to comply with nondiscrimination clauses of this Contract or fails to include such contract provisions in all subcontracts, this Contract may at Owner's election be declared void AB INITIO, cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further contracts with the Owner and City. Any employee, applicant for employment, or prospective employee with information concerning any breach of these requirements may communicate such information to the City and Owner, either of which may commence a prompt investigation of the alleged violation. Pursuant to such investigation, the Contractor will permit access to its contractors' books, records, and accounts. If the City or Owner conclude that the Contractor has failed to comply with nondiscrimination clauses, the remedies set out above may be invoked.

§ 13.18 GENERAL PROVISIONS

§ 13.18.1 All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, paragraphs, and subparagraphs are for convenience only and neither limit nor amplify the provisions of this Contract in itself. The use herein of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

§ 13.18.2 Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

§ 13.18.3 Each party hereto agrees to do all act and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

§ 13.18.4 Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~one hundred twenty (120) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

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- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped; or
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped; or
- .3 ~~because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~
- .4 ~~the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.~~

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor ~~or a Subcontractor~~, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, ~~or 120 days in any 365 day period, whichever is less.~~

§ 14.1.3 If one of the reasons described in Section 14.1.1 ~~or 14.1.2~~ exists, the Contractor may, upon ~~seventeen~~ (10) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner (i) any unpaid amounts due him for the Cost of the Work and an appropriate amount of Contractor's Fee under Section 5 of the Owner-Contractor Agreement, including retainage, and (ii) reasonable close-out costs actually incurred to the date of close-out and directly related to such termination. However, in no event shall the Owner be liable to the Contractor (i) for an amount in excess of the initial Guaranteed Maximum Price (as adjusted in accordance with the terms of this Contract) less amounts already paid to Contractor, (ii) damages; or (iii) any anticipated profits for unperformed Work. In addition, such payments to the Contractor shall be reduced by any setoffs to which the Owner is entitled under this Contract or any other Contract between Contractor and Owner or any entity related to Owner, payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 14.1.4 [Not Used.] ~~If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 ~~persistently or repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make prompt payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 ~~persistently~~ disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of a substantial breach of a material provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, ~~upon certification by the Architect that sufficient cause exists to justify such action,~~ may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Section 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's and Owner's Representatives services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall not be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. ~~The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.~~

§ 14.2.5 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Owner shall be entitled to recover its damages resulting from such termination including, but not limited to, all costs in excess of the initial Guaranteed Maximum Price (as adjusted in accordance with the terms of this Contract), including compensation for the Architect's and Owner's Representative's services and expenses made necessary thereby, and, if the Work is not completed by the date set forth in Section 4.2 of the Agreement (as adjusted in accordance with the terms of this Contract), liquidated damages for delay as set forth in the Agreement. All amounts paid pursuant to this Section 14.2.5 shall be certified by the Architect, upon application, and the obligations of this Section 14.2.5 shall survive the termination of this Agreement.

§ 14.2.6 It is recognized that if the Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors on account of the Contractor's insolvency, such circumstance could impair or frustrate the Contractor's performance of this Contract. Accordingly, the parties to this Contract agree that upon the occurrence of any such event, the Owner shall be entitled to request of the Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents and the Contractor shall have (7) business days to provide such assurances. The Contractor's failure to comply with such request shall entitle the Owner to terminate this Contract immediately and to the accompanying rights thereunder. The Owner shall be entitled to recover its damages resulting from such termination including, but not limited to, all costs incurred by the Owner in excess of the Guaranteed Maximum Price and, if the Work is not completed by the scheduled date of Substantial Completion, liquidated damages for delay as set forth in Article 4 of the Agreement.

§ 14.2.7 If Owner wrongfully terminates Contractor for default, such termination shall be deemed a termination for convenience and Contractor's sole remedy will be the recovery of those amounts set forth in Section 14.4.3.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. ~~Adjustment of the Contract Sum shall include profit.~~ No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- .1 cease all operations except as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate (or, at Owner's election, assign to Owner) all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work (including General Conditions Costs & Categories) properly performed in connection with the terminated portion of the Work prior to the effective date of termination, an appropriate amount of Fee, reasonable and necessary costs of close out, and items properly and timely fabricated off the Project site, delivered and stored in accordance with Owner's instructions. Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits or lost opportunity. Owner shall be credited for (i) payments previously made to Contractor for the terminated portion of the Work, (ii) valid claims that the Owner has against Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum. In no event, however, will such amounts payable to Contractor exceed the initial Guaranteed Maximum Price (as adjusted under the terms of this Contract) reduced by the amount of prior payments made to Contractor. Subcontracts, sub-subcontracts, and purchase orders will contain appropriate provisions for termination for convenience under this Section 14.4, executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ ARTICLE 15 MEASUREMENTS AND RELATED MATTERS

§ 15.1 Upon beginning Work the Contractor shall check the Owner's survey and shall notify the Owner of any errors in the survey within a reasonable time after the Date of Commencement. Within a reasonable time after the Date of Commencement, the Contractor shall lay out the Work from the drawings place marks and establish a mark to which all measurements shall be referenced and shall perform a wall check survey.

§ 15.2 The Contractor shall be responsible for any damage that may be sustained by others for incorrect location of the Work which is the responsibility of the Contractor. The Contractor shall verify in writing to the Owner, prior to processing the first Application for Payment, all grades, lines, levels, dimensions, and elevations which are necessary for the Contractor to perform the Work for each garage. Nothing in this provision shall diminish Contractor's obligations under the Contract Documents.

§ 15.3 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements, dimensions, elevations and conditions with other information known to the Contractor from the Contract Documents or otherwise throughout construction.

§ 15.4 All work and material furnished hereunder shall be prepared, furnished and erected in strict conformity with the Contract Documents.

LIST OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Construction Schedule
B	General Conditions Costs and Categories
C	Schedule of Values
D	Lien Waiver Forms
E	Supervisory Personnel
F	Certification to Lender (Not Used)
G	General Conditions of the Contract For Construction
H	Environmental and Geotechnical Reports
I	Environmental Protocol (Not Used)
J	Unit Prices
K	Construction Easements
L	Zoning Conditions (Not Used)
M	Consent to Assignment (Not Used)
N	List of Drawings and Specifications
O	GDA/DB Agreement Excerpts
P	Accepted Alternates
Q	Not Used
R	Contractors Assumptions and Clarifications
S	Little Miller Act Bond Form
T	Craft Labor Rates
U	Insurance and Bond Rates
V	Staff Labor Rates

FINAL
SET OF
EXHIBITS
2/16/05

(148)

(151)

EXHIBIT A
CONSTRUCTION SCHEDULE
[Attached]


1238459


A-1


149


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Activity ID	Activity Description	Units	Early Start	Early Finish	CRITICAL	GRAND TOTAL	DEPT	RESP	2004	2005	2006	2007
400660	MEP Trim-Out - Level 4 Residential (HAMMOCK B4)	19*	14NOV08	12DEC08		MILE	4	L4	WT			
Level 5 (Residential)												
400440	Building Structure - Level 5 Resid. (HAMMOCK B4)	25*	02JUN06	11JUL06		MILE	4	L5	WT			
400550	MEP Rough-in - Level 5 Residential (HAMMOCK B4)	40*	13JUN06	10AUG06		MILE	4	L5	WT			
400610	Finishes - Level 5 Residential (HAMMOCK B4)	49*	10OCT06	19DEC06		MILE	4	L5	WT			
400670	MEP Trim-Out - Level 5 Residential (HAMMOCK B4)	19*	17OCT06	10NOV06		MILE	4	L5	WT			
Block 4												
1940	Block 4 Construction	444*	10MAY05	12APR07		MILE	4	4	WT			
400001	Start Block 4 Construction	0	10MAY05			MILE	4	4	WT			
400002	Finish Block 4 Construction FNLT 3/14/07	0		12APR07		MILE	4	4	WT			
Block 3A												
1950	Block 3A Construction	217*	16NOV05	28OCT06		MILE	3A	3A	WT			


MEP Trim-Out - Level 4 Residential (HAMMOCK B4)  Building Structure

MEP Trim-Out - Level 5 Residential (HAMMOCK B4)  MEP Rough-in

MEP Trim-Out - Level 5 Residential (HAMMOCK B4)  Finishes

Block 4 Construction  Start Block 4 Construction

Block 4 Construction  Finish Block 4 Construction FNLT 3/14/07

Block 3A Construction  Block 3A Construction

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Start Date

Finish Date

Rate Date

Run Date

01DEC03

07AUG09

21DEC04

17JAN05 07:45

Early Bar

Progress Bar

Critical Activity

01DEC03

07AUG09

21DEC04

17JAN05 07:45

RS14

Whiting-Turner Contracting Company

Rockville Town Square

Exhibit A

Sheet 8 of 9

Date

Revision

Checked

Approved

EXHIBIT B
GENERAL CONDITIONS COSTS & CATEGORIES
[Attached]

1238459

B-1

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Rockville Town Square
Exhibit B
General Conditions Scope and Billing Schedules

COST CODE	DESCRIPTION	QTY	UNIT	UNIT PRICE	ITEM COST	COMMENTS
100002	Move In/Out	1	LS	15,000	15,000	
100007	Misc Yard Charges	1	LS	10,000	10,000	
110001	Small Tools & Equip	32	MO	3,000	96,000	
110002	Misc Supplies	32	MO	3,000	96,000	
110005	Computer Networking	2	EA	4,000	8,000	
110005	Printers	3	EA	3,000	9,000	
110006	Copy Machine	0	LS	20,000	0	By RD Rockville
110007	Fax Machine	0	LS	3,500	0	By RD Rockville
110007	Office Furniture	1	LS	15,000	15,000	
120001	Drawings & Specs	1	ALLOW	75,000	75,000	
120002	Surveys	0	LS	0	0	In Cost of Work
120003	Layout & Grades	0	LS	0	0	By Subcontractors
120004	Testing & Inspection	0	LS	0	0	By Owner
120005	Permits	0	LS	0	0	By Owner
120008	As Built Dwgs	1	LS	25,000	25,000	
123100	Equipment Rental	0	LS	0	0	In Cost of Work
123150	Trailer Rental	0	MO	4,000	0	By RDR - Leased Office Space
123150	Trailer Ground Lease	0	ALLOW	142,500	0	Not Applicable
123150	Clean Trailers	0	MO	500	0	By RDR - Leased Office Space
122000	Postage & Shipping	32	MO	2,500	80,000	
1300025	General Project Supervision	1	LS	2,377,377	2,377,377	Wages including burden
1300025	Sitework Supervision	1	LS	932,177	932,177	
1300025	Block 5 & 4 Supervision	1	LS	1,274,226	1,274,226	
1300025	Block 1 & 2 Supervision	1	LS	1,118,971	1,118,971	
1300025	Block 3B & 3A Supervision	1	LS	690,848	690,848	
130009	Guard Service	1	ALLOW	150,000	150,000	
140002	Safety & Barricades	0	LS	0	0	In Cost of Work
140003	Temporary Roads	1	ALLOW	150,000	150,000	
140008	Project Signs	2	EA	4,000	8,000	
140009	Fence For Trailer Comp	0	LS	10,000	0	Not Applicable
140009	Construction Fence	1	ALLOW	65,700	65,700	
150001	Progress Photos	32	MO	500	16,000	
150004	CPM Set Up/Equip.	1	LS	15,000	15,000	
151000	QC/Safety Program	32	MO	1,000	32,000	
160002	Tool Trailers	32	MO	600	19,200	3 trailers
160004	Owner /Arch Trailers	0	MO	1,200	0	By Owner - Leased Office Space
160005	Install Trailer Telephone	0	LS	6,000	0	By Owner - Leased Office Space
160005	Phone Rental	0	MO	500	0	By Owner - Leased Office Space
160006	Telephone Charges	32	MO	150	4,800	DSL Service Only
160007	Install Trailer Elec	0	LS	25,000	0	By Owner - Leased Office Space
160008	Trailer Elec Charges	0	MO	1,500	0	By Owner - Leased Office Space
160009	Install Trailer Water/San	0	LS	25,000	0	By Owner - Leased Office Space
160009	Water Charges	32	MO	200	6,400	
160011	Sanitary Facilities	32	MO	2,500	80,000	
160012	Job Drinking Water/Ice	32	MO	500	16,000	
160019	Mock ups	0	LS	0	0	In Cost of Work
170001	Daily Clean Up	0	LS	0	0	In Cost of Work
170002	Street Cleaning	1	ALLOW	150,000	150,000	

Rockville Town Square
Exhibit B
General Conditions Scope and Billing Schedules

COST CODE	DESCRIPTION	QTY	UNIT	UNIT PRICE	ITEM COST	COMMENTS
170002	Final Clean Up	0	LS	0	0	In Cost of Work
170006	Trash Removal	0	LS	0	0	In Cost of Work
180001	Travel	1	LS	25,000	25,000	
199100	Builders Risk Insurance	0	LS	0	0	See Summary Sheet
199100	Insurance	0	LS	0	0	See Summary Sheet
199100	P & P Bond	0	LS	0	0	See Summary Sheet
	Preconstruction	0	LS	0	0	See Summary Sheet
	RDR Office Costs	1	LS	775,500	775,500	**
Total General Conditions					8,337,000	
Prorated General Conditions:						
	Sitework		8.50%		709,000	
	Block 3A		2.00%		167,000	
	Public Garages		21.50%		1,793,000	
	Private Garages		4.00%		333,000	
	Retail		8.00%		666,000	
	Residential		56.00%		4,669,000	
** RDR Office Costs will be billed as a lump sum and reimbursed to RD Rockville						

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EXHIBIT C
SCHEDULES OF VALUES
[Attached]

1238459

C-1

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Rockville Town Square
Exhibit C
Schedule of Values

Updated 01/17/2005

Bid Unit	Subcontractor	Block 5 GMP	Block 1/2 Budget (Allowance Only)	Block 4 Budget (Allowance Only)
001	General Requirements	\$ 90,000	\$ 202,364	\$ 359,880
01B	Surveying	\$ 7,500	\$ 21,324	\$ 3,125
02A	Earthwork	\$ 1,305,161	\$ 820,320	\$ 900,875
02E	Sheeting and Shoring	\$ 465,350	\$ 154,915	\$ 154,020
02K	Dewatering	\$ 29,180	\$ 29,180	\$ 29,178
02Q	Deep Foundations	\$ -	\$ -	\$ 1,500,000
03A	Concrete	\$ 3,837,905	\$ 3,874,915	\$ 4,326,108
03B	Precast Concrete	\$ -	\$ 1,797,500	\$ 4,154,000
04A	Masonry/Precast	\$ 128,291	\$ 327,000	\$ 488,856
05B	Miscellaneous Metals	\$ 147,875	\$ 298,094	\$ 445,643
06A	Rough Carpentry	\$ -	\$ -	\$ 10,000
07D	Waterproofing	\$ 232,882	\$ 175,000	\$ 261,620
08A	Hollow Metal Doors	\$ 41,376	\$ 30,000	\$ 44,849
08B	Storeferonts	\$ 10,000	\$ -	\$ -
08C	Overhead Doors	\$ 10,081	\$ 10,000	\$ 14,950
09A	Drywall/Metal Studs	\$ 75,282	\$ 185,000	\$ 276,570
09D	Painting	\$ 26,000	\$ 60,000	\$ 130,477
10D	Miscellaneous Specialties	\$ 4,800	\$ 9,250	\$ 13,829
11C	Louvers	\$ 17,686	\$ 21,000	\$ 63,000
14A	Elevators	\$ 97,500	\$ 389,550	\$ 300,000
15A	Plumbing	\$ 330,000	\$ 471,000	\$ 704,132
15B	HVAC	\$ 274,900	\$ 185,000	\$ 550,000
15C	Fire Protection	\$ 151,206	\$ 115,000	\$ 450,000
16A	Electrical	\$ 451,000	\$ 760,000	\$ 1,136,179
	Owner Allowances	\$ 181,000	\$ 164,500	\$ 1,189,800
	Subtotal	\$ 7,915,000	\$ 10,101,000	\$ 17,508,000
	General Conditions	\$ 448,250	\$ 448,250	\$ 896,500
	Liability Insurance	\$ 59,000	\$ 74,000	\$ 129,000
	Builder's Risk Insurance	\$ 26,000	\$ 32,000	\$ 56,000
	P&P Bond	\$ 67,000	\$ 84,000	\$ 146,000
	Fee	\$ 171,000	\$ 215,000	\$ 375,000
	Contractor's Contingency	\$ 173,000	\$ 220,000	\$ 383,000
	Incentive Bonus	\$ 25,000	\$ 25,000	\$ 100,000
	Subtotal	\$ 8,884,250	\$ 11,199,250	\$ 19,593,500
Total GMP		\$39,677,000		

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EXHIBIT D
LIEN WAIVER FORMS

1238459

D-1

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EXHIBIT D-1

CONTRACTOR AFFIDAVIT AND PARTIAL
WAIVER OF CLAIMS AND LIENS

THE STATE OF _____)
) ss.
COUNTY OF _____)

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be a credible person and officer of _____ ("Contractor") and who, being duly sworn, upon his oath declares and acknowledges as follows:

1. I am the duly authorized agent for Contractor, which has authorized me to make this affidavit, to enter into the agreements and to grant the waivers herein set forth, on its behalf and as its acts and deeds. All the statements in this Affidavit are true and correct.

2. Pursuant to an agreement dated _____, 20__ between Contractor and _____ ("Owner"), Contractor has supplied materials and performed labor in connection with the construction of improvements upon certain real property in _____ County, _____, described in Exhibit A attached hereto and hereby made a part thereof ("Land"). These improvements are more particularly described as construction of _____ ("Improvements").

3. Contractor has received payment in the amount of _____ Dollars (\$_____) [insert total of all payments received to date], for all materials supplied and labor performed by or on behalf of Contractor in connection with the construction of the Improvements during the period through _____, 20__. [Insert date of end of prior progress payment period.] Accordingly, Contractor waives and releases any and all liens, claims, causes of action, suits, demands, rights and interests (whether choate or inchoate and including, without limitation, all mechanic's and materialmen's liens under the Constitution and statutes of the State/Commonwealth of _____) owned, claimed, or held by Contractor against Owner, its lenders or guarantors, and/or the Land and Improvements or any part thereof by reason of materials supplied or labor performed on the Land and Improvements or for any other reason through _____, 20__ [insert date of end of prior progress payment period].

4. In consideration of and conditioned upon receipt from Owner of _____ Dollars (\$_____) [insert amount approved for payment in present Application for Payment], the sufficiency of which is hereby acknowledged, Contractor waives and releases any and all liens, claims, causes of action, suits, demands, rights and interests (whether choate or inchoate and including, without limitation, all mechanic's and materialman's liens under the Constitution and statutes of the State/Commonwealth of _____) owned, claimed or held by Contractor against Owner, its lenders or guarantors, and/or the Land and Improvements or any part thereof by reason of materials supplied or labor

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performed on the Land and Improvements or for any other reason through _____, 200__
[insert date covered by present Application for Payment].

5. Contractor warrants that all costs that Contractor has incurred and bills that Contractor owes to others for materials supplied or labor performed in connection with the Land or Improvements through _____, 20__ [insert date of end of prior progress payment period] have been fully paid and satisfied. Contractor further warrants that should any claim or lien be filed for material supplied or labor performed through _____, 20__ [same date], Contractor shall immediately furnish a bond for the release of each such lien, obtain settlement of each such lien, and furnish Owner written full release of such lien. Should Contractor be unable to obtain such release, Contractor agrees to indemnify and hold harmless Owner (and its lenders and guarantors) for any and all costs it may incur by reason of such claim or lien.

EXECUTED this _____ day of _____, 20__.

CONTRACTOR

By: _____

Title: _____

SUBSCRIBED AND SWORN TO before me the said Contractor Affidavit and Partial Waiver of Claims and Liens, this _____ day of _____, 20__, to certify which witness my hand and seal of office.

NOTARY PUBLIC in and for
_____ County, _____

My Commission Expires:

EXHIBIT D-2

CONTRACTOR AFFIDAVIT AND FINAL
RELEASE OF CLAIMS AND LIENS

THE STATE OF _____)
) ss.
COUNTY OF _____)

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be a credible person and officer of _____ ("Contractor") and who, being duly sworn, upon his oath declares and acknowledges as follows:

1. I am the duly authorized agent for Contractor, which has authorized me to make this affidavit, to enter into the agreements and to grant the waivers herein set forth, on its behalf and as its acts and deeds. All the statements in this Affidavit are true and correct.

2. Pursuant to an agreement dated _____, 20__ between Contractor and _____ ("Owner"), Contractor has supplied materials and performed labor in connection with the construction of improvements upon certain real property in _____ County, _____, described in Exhibit A attached hereto and hereby made a part hereof ("Land"). These improvements are more particularly described as construction of _____ ("Improvements").

3. Contractor has received _____ Dollars (\$_____) [insert amount of Final Payment], which constitutes payment in full for any and all materials supplied and labor performed by or on behalf of Contractor on the above described Improvements. Contractor waives and releases any and all liens, claims, causes of action, suits, demands, rights and interests (whether choate or inchoate and including, without limitation, all mechanic's and materialman's liens under the Constitution and statutes of the State/Commonwealth of _____) owned, claimed or held by Contractor against Owner, its lenders or guarantors, and/or the Land and Improvements or any part thereof by reason of materials supplied or labor performed on said Land and Improvements or for any other reason.

4. Contractor warrants that all costs that Contractor has incurred and bills that Contractor owes to others for materials supplied or labor performed in connection with the Land or Improvements have been fully paid and satisfied. Contractor further warrants that should any claim or lien be filed for material supplied or labor performed in connection with the Improvements, Contractor will immediately furnish a bond for the release of such lien, obtain settlement of any such lien, and furnish Owner a written, full release of such lien. Should Contractor be unable to obtain such release, Contractor agrees to fully indemnify and hold harmless Owner from any and all costs it may incur by reason of such claim or lien.

EXECUTED this ____ day of _____, 20__.

CONTRACTOR

By: _____

Title: _____

SUBSCRIBED AND SWORN TO before me the said Contractor Affidavit of Final Release of Claims and Liens, this ____ day of _____, 20__, to certify which witness my hand and seal of office.

NOTARY PUBLIC in and for
____ County, _____

My Commission Expires:

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EXHIBIT D-3

**SUBCONTRACTOR AFFIDAVIT AND
PARTIAL WAIVER OF CLAIMS AND LIENS**

THE STATE OF _____)
) ss.
COUNTY OF _____)

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be a credible person and officer of _____ ("Subcontractor") and who, being duly sworn, upon his oath declares and acknowledges as follows:

1. I am the duly authorized agent for Subcontractor, which has authorized me to make this affidavit, to enter into the agreements and to grant the waivers herein set forth, on its behalf and as its acts and deeds. All the statements in this Affidavit are true and correct.

2. In connection with an agreement dated _____, 20__ between _____ ("Owner"), and _____ ("Contractor"), and pursuant to an agreement dated _____, 20__ between Contractor and Subcontractor, Subcontractor has supplied materials and performed labor in connection with the construction of improvements upon certain real property in _____ County, _____, described in Exhibit A attached hereto and hereby made a part thereof ("Land"). These improvements are more particularly described as construction of _____ ("Improvements").

3. Subcontractor has received payment in the amount of _____ Dollars (\$_____) [insert total of all payments received to date for all materials supplied and labor performed by or on behalf of Subcontractor in connection with the Improvements during the period through _____, 20__.] [Insert date of end of prior progress payment period.] Accordingly, Subcontractor waives and releases any and all liens, claims, causes of action, suits, demands, rights and interests (whether choate or inchoate and including, without limitation, all mechanic's and materialmen's liens under the Constitution and statutes of the State/Commonwealth of _____) owned, claimed, or held by Subcontractor against the Contractor, Contractor's sureties, the Owner, Owner's lenders and guarantors, and/or the Land and Improvements or any part thereof by reason of materials supplied or labor performed on the Land and Improvements or for any other reason through _____, 200__ [insert date of end of prior progress payment period].

4. In consideration of and conditioned upon the payment by Contractor of the sum of _____ Dollars (\$_____) [insert amount approved for payment in present Application for Payment], the sufficiency of which is hereby acknowledged, Subcontractor waives and releases any and all liens, claims, causes of action, suits, demands, rights and interests (whether choate or inchoate and including, without limitation, all mechanic's

and materialman's liens under the Constitution and statutes of the State/ Commonwealth of _____) owned, claimed or held by Subcontractor against the Contractor, Contractor's sureties, the Owner, Owner's lenders and guarantors, and/or the Land and Improvements, or any part thereof by reason of materials supplied or labor performed on the Land and Improvements or for any other reason through _____, 200__ [insert date covered by present application for payment].

5. Subcontractor warrants that all costs that Subcontractor has incurred and bills that Subcontractor owes to others for materials supplied or labor performed in connection with the Land or Improvements through _____ [insert date of end of prior progress payment period] have been fully paid and satisfied. Subcontractor further warrants that should any claim or lien be filed for material supplied or labor performed by virtue of Subcontractor's participation in the construction of the Improvements, Subcontractor will immediately furnish a bond for the release of each such lien, obtain settlement of each such lien, and furnish Owner and Contractor written full release of such liens if Owner has paid Contractor all amounts due Subcontractor. Should Subcontractor be unable to obtain such release, Subcontractor agrees to fully indemnify and hold harmless Contractor and Owner (and its lenders and guarantors) for any and all costs they may incur by reason of such claim or lien.

EXECUTED this _____ day of _____, 20__.

SUBCONTRACTOR

By: _____

Title: _____

SUBSCRIBED AND SWORN TO before me the said Subcontractor Affidavit and Partial Waiver of Claims and Liens, this _____ day of _____, 20__, to certify which witness my hand and seal of office.

NOTARY PUBLIC in and for
_____ County, _____

My Commission Expires:

EXHIBIT D-4

SUBCONTRACTOR AFFIDAVIT AND FINAL
RELEASE OF CLAIMS AND LIENS

THE STATE OF _____)
) ss.
COUNTY OF _____)

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be a credible person and officer of _____ ("Subcontractor") and who, being duly sworn, upon his oath declares and acknowledges as follows:

1. I am the duly authorized agent for Subcontractor, which has authorized me to make this affidavit, to enter into the agreements and to grant the waivers herein set forth, on its behalf and as its acts and deeds. All the statements in this Affidavit are true and correct.

2. In connection with an agreement dated _____, 20__ between _____ ("Owner") and _____ ("Contractor"), and pursuant to an agreement dated _____, 20__ between Contractor and Subcontractor, Subcontractor has supplied materials and performed labor in connection with the construction of improvements upon certain real property in _____ County, _____, described in Exhibit A attached hereto and hereby made a part hereof ("Land"). These improvements are more particularly described as _____ ("Improvements").

3. Subcontractor hereby certifies it has received payment in the amount of _____ Dollars (\$ _____) [insert amount of Final Payment] which constitutes payment in full for any and all materials supplied and labor performed by or on behalf of Subcontractor in connection with the Improvements. Accordingly, Subcontractor waives and releases any and all liens, claims, causes of action, suits, demands, rights and interests (whether choate or inchoate and including, without limitation, all mechanic's and materialman's liens under the Constitution and statutes of the State/Commonwealth of _____) owned, claimed or held by Subcontractor against the Contractor, Contractor's sureties, the Owner, Owner's lenders and guarantors, and/or the Land and Improvements or any part thereof by reason of materials supplied or labor performed on such Land and Improvements or for any other reason.

4. Subcontractor warrants that all costs that Subcontractor has incurred and bills that Subcontractor owes to others for materials supplied or labor performed or labor performed in connection with the Land or Improvements have been fully paid and satisfied. Subcontractor further warrants that should any claim or lien be filed for material supplied or labor performed by virtue of Subcontractor's participation in the construction of the Improvements, Subcontractor will immediately furnish a bond for the release of each such lien, obtain settlement of any such

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lien, and furnish Owner and Contractor written full release of such lien. Should Subcontractor be unable to obtain such release, Subcontractor agrees to fully indemnify and hold harmless Contractor and Owner (and its lenders and guarantors) from any and all costs they may incur by reason of such claim or lien.

EXECUTED this ____ day of _____, 20__.

SUBCONTRACTOR

By: _____

Title: _____

SUBSCRIBED AND SWORN TO before me the said Subcontractor Affidavit and Final Release of Claims and Liens, this ____ day of _____, 20__, to certify which witness my hand and seal of office.

NOTARY PUBLIC in and for

County, _____

My Commission Expires:

EXHIBIT E
SUPERVISORY PERSONNEL
[Attached]

1238459

E-1

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